

FIRST REGULAR SESSION

HOUSE BILL NO. 777

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOLLINGSWORTH.

Read 1st time February 14, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1957L.011

AN ACT

To repeal section 577.023, RSMo 2000, relating to felony enhancement provisions, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 577.023, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 577.023, to read as follows:

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing;

(2) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section
18 565.082, RSMo; and

19 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
20 one intoxication-related traffic offense, where such prior offense occurred within five years of
21 the occurrence of the intoxication-related traffic offense for which the person is charged.

22 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
23 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
24 misdemeanor.

25 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
26 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
27 felony.

28 4. No court shall suspend the imposition of sentence as to a prior or persistent offender
29 under this section nor sentence such person to pay a fine in lieu of a term of imprisonment,
30 section 557.011, RSMo, to the contrary notwithstanding, nor shall such person be eligible for
31 parole or probation until he has served a minimum of forty-eight consecutive hours'
32 imprisonment, unless as a condition of such parole or probation such person performs at least
33 ten days of community service under the supervision of the court in those jurisdictions which
34 have a recognized program for community service.

35 5. The court shall find the defendant to be a prior offender or persistent offender, if:

36 (1) The indictment or information, original or amended, or the information in lieu of an
37 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
38 or persistent offender; and

39 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
40 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

41 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
42 by the court that the defendant is a prior offender or persistent offender.

43 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to
44 the jury outside of its hearing.

45 7. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
46 findings of such facts to a later time, but prior to sentencing.

47 8. The defendant shall be accorded full rights of confrontation and cross-examination,
48 with the opportunity to present evidence, at such hearings.

49 9. The defendant may waive proof of the facts alleged.

50 10. Nothing in this section shall prevent the use of presentence investigations or
51 commitments.

52 11. At the sentencing hearing both the state and the defendant shall be permitted to

53 present additional information bearing on the issue of sentence.

54 12. The pleas or findings of guilty shall be prior to the date of commission of the present
55 offense.

56 13. The court shall not instruct the jury as to the range of punishment or allow the jury,
57 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
58 prior offenders or persistent offenders.

59 14. Evidence of prior convictions shall be heard and determined by the trial court out of
60 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
61 be limited to evidence of convictions received by a search of the records of the Missouri uniform
62 law enforcement system maintained by the Missouri state highway patrol. After hearing the
63 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or
64 county ordinance in a county or municipal court for driving while intoxicated or a conviction or
65 a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended
66 execution of sentence, probation or parole or any combination thereof in a state court shall be
67 treated as a prior conviction.